Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

No. 79-1389

NANCY JANE REINE

Petitioner,

versus

STATE OF LOUISIANA

RESPONSE OF THE STATE OF LOUISIANA TO THE PETITION FOR WRIT OF CERTIORARI

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I.

AS TO THE ISSUE OF THE RESPONSIVE VERDICT OF MANSLAUGHTER TO AN ORIGINAL CHARGE OF SECOND DEGREE MURDER. LOUISIANA CODE OF CRIMINAL PROCEDURE ARTICLE 814.

The petitioner argues that the jury application of the responsive verdict of manslaughter to an original charge of murder under Article 814 of the Louisiana Code of Criminal Procedure is unconstitutional when the evidence is silent as to the issue of "Sudden Passion" or "Heat of Blood."

The rationale behind Louisiana's responsive verdict statute can be found in the legislative intent in establishing enumerated specific responsive verdicts for the most common crimes, based upon prior jurisprudential rules established by the courts of the State of Louisiana.

The criteria for determining responsiveness in Louisiana if it has not been specifically established by the legislature is as follows:

> "First, all essential elements of the lesser offense must be included in the indictment for the offense charged. Second, the generic offenses must be segregated from the non-generic offenses. To do this, the genus of the crime charged in the indictment is determined, and each of the lesser crimes compared with it. If the lesser crime is of the same generic class, it is responsive, if not, it is not responsive. If the lesser offense meets both of these tests, it may be the subject of a valid and 'responsive' verdict." Comment, 5 LA. L. REV. 603, 609 (1944).

The Supreme Court of the State of Louisiana has spoken concisely on the constitutionality of the responsive verdict of manslaughter to an original charge of second degree murder. *State v. Peterson*, 290 So.2nd 307, 311 (LA. 1974). In that case, defendant argued manslaughter is not a legal or constitutional verdict, especially in a case where there is no evidence to support such a verdict, (That is, no evidence of the "Passion" element). This is the same issue before this Honorable Court. It is clear from a reading of the second degree murder statute and the manslaughter statute (Revised Statute 14:30.1 and Revised Statute 14:31 respectively) that all of the essential elements of the two crimes are identical and the only exception is that the statutory definition of man-

slaughter provides that the killing, which would otherwise be murder, is "committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self control and cool reflection." R.S. 14:31, Supra.

If passion in fact reduces a homicide requiring the same scienter, specific intent, from murder to a less serious crime, manslaughter, then lack of passion may realistically be seen as an additional element which elevates a manslaughter to murder.

However, the presence of passion is in the nature of a defense, and as such the additional "element" of the lack of passion need not be proven by the State in a murder prosecution. Actually, the presence of passion is not an additional element of the crime of manslaughter, rather it is a factor which exhibits a degree of culpability less than that present when a homicide is committed without passion caused by provocation. cf *Peterson*, Supra

In comparing other jurisdictions, the Louisiana Supreme Court cited the Model Penal Code Section 1.08 (4) (c) (proposed draft of 1962), which allowed degrees of culpability as a basis for legislating a responsive verdict as well as comparing the Illinois and Connecticut statutes to Louisiana's conceptial viewpoint, and stating that "Sudden Passion" or "Heat of Blood" provisions operate as a mitigating factor in a murder prosecution, "not a great deal unlike provisions in Criminal Law of other jurisdictions where such factors are considered to be "affirmative defenses." cf *Peterson*, Supra

In *Roberts v. Louisiana*, 428 U.S. 325 (Sup. Ct. 1976),

this court addressed the issue in dicta, by contrasting the North Carolina jurisprudential rule with the Louisiana responsive statute. It is submitted that Louisiana does require that the lesser included offense have all of the essential elements of the greater charge as evidenced by the criteria established above, which classifies the "Passion" issue not as an element of any crime charge, but rather as an automatic defense mechanism which can be used in mitigation, and yet still demand and require the prosecution to prove every essential element of the crime. The main thrust of *Roberts*, Supra, was the unconstitutionality of Louisiana's 1st degree murder statute and we submit that the action of the jury in returning a verdict of manslaughter against petitioner is within constitutionally established principles and does not deny petitioner due process of law.

II.

AS TO THE ISSUE THAT ARTICLE 5, SECTION 5 (c) OF THE LOUISIANA CONSTITUTION PROHIBITS REVIEW BY THE LOUISIANA SUPREME COURT OF THE SUFFICIENCY OF THE EVIDENCE.

The Louisiana Constitution of 1974, states that in crimial matters, the appellate jurisdiction of the Louisiana Supreme Court extends only to questions of law. This constitutional principle has been interpreted by the Louisiana Supreme Court, and, as the issue applies to the facts of this case, the argument of petitioner has no merit, due to the fact that as a matter of law, when this petitioner applied to the trial court for a new trial based upon the contention that there is no evidence at all of an essential element, then that allegation,

clearly became a question of law which was in fact presented to the Louisiana Supreme Court for its review. (See Articles 1 and 6 of petitioner's motion for new trial.) *State v. Blackstone*, 347 So.2nd 193 (LA. 1977), *State v. Reeves*, 342 So.2nd 605 (LA. 1977), and other cases cited therein.

Petitioner alleged in the motion for new trial that there was no evidence introduced which would form the basis for a verdict of manslaughter. As such, petitioner's contention that "Sudden Passion" or "Heat of Blood" are essential for the jury to return a verdict of manslaughter then caused those factual issues to become questions of law and therefore reviewable by the Louisiana Supreme Court.

The Louisiana Supreme Court will review the law and evidence when there is an appealable allegation that the elements of the crime have not been proven. There is no inconsistency in the application of Article 5 Section 5 (c) of the constitution of the State of Louisiana of 1974 and the recent decision of this court in *Jackson v. Virginia*, 99 S. Ct. 2781 (1979), which addressed itself to the issue that a federal court will be allowed to review the sufficiency of the evidence. In practice, the Louisiana Supreme Court does in fact review the sufficiency of the evidence under circumstances when those facts becomes issues of law.

III.

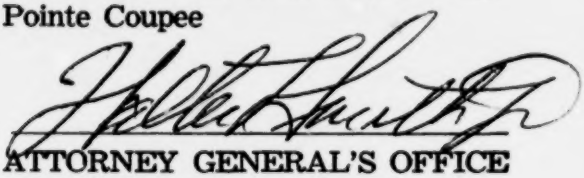
CONCLUSION

This court should deny the writ of certiorari in this case because the responsive verdict of manslaughter to an original charge of murder in the State of Louisiana is based upon

rational constitutional principles, and further because Louisiana's Constitution of 1974 does not prohibit review of the sufficiency of evidence provided that proper attention is directed toward that issue in a judicial review of a lower court proceeding.

Resepectfully submitted,

DISTRICT ATORNEY'S OFFICE
18TH JUDICIAL DISTRICT
Parishes of Iberville, West Baton Rouge and Pointe Coupee

By: 

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FOR THE STATE OF LOUISIANA

APPENDIX

STATE OF LOUISIANA
VERSUS
NANCY JANE REINE

NUMBER 24,882, CRIMINAL DOC.
18TH JUDICIAL DISTRICT COURT
PARISH OF POINTE COUPEE
STATE OF LOUISIANA

MOTION FOR A NEW TRIAL

NOW INTO THE COURT, comes Nancy Jane Reine, defendant in the above entitled and numbered cause, through undersigned counsel, and moves the court that the verdict of the jury be set aside and a new trial ordered, for the following reasons, to wit:

1.

That the verdict of the jury is contrary to the law and the evidence.

2.

The Court erred in permitting the State to offer into evidence conversations which took place between defendant and Bridget Adams prior to June 5, 1978. (See pages 34 to 41 Vol. 1—opening statement of Assistant District Attorney page 19 of Vol. 1.)

3.

The court erred in refusing to suppress the use of the gun into evidence.

4.

The court erred in permitting the introduction of the gun into evidence.

5.

The court erred in permitting Bridget Adams to testify in rebuttal particularly with reference to the testimony relating to what the defendant had said concerning her having obtained a gun (page 31 of Vol. 2 and page 134 *et seq* Vol. 2).

6.

There was no evidence introduced which could form the basis for a verdict of manslaughter in that there was no evidence indicating that the defendant committed the offense in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of self-control and cool reflection.

7.

Defendant is informed and believes and therefore alleges that juror, Mrs. Mary A. Poche, was acquainted with the family of the decendent. However, in the course of the court's interrogation of this juror she denied knowing the family of decedent.

8.

Defendant attaches hereto and makes a part hereof the transcript and all of the evidence taken in this matter.

WHEREFORE MOVER PRAYS that after due proceed-

ings, the verdict of the jury be set aside and a new trial ordered herein.

BY ATTORNEYS:

D'AMICO & CURET
By: s/ SAM J. D'AMICO
263 Riverside Mall, Suite 610
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CERTIFICATE OF SERVICE

I, hereby certify that a copy of the above and foregoing petition has been served on Mr. Sam J. A'mico esq., Attorney for petitioner, by depositing the same in the United States Mail, with first class postage, pre-paid, properly addressed to the respective addresses.

Baton Rouge, Louisiana, this 29th day of May, 1980.

DISTRICT ATTORNEY'S OFFICE
18TH JUDICIAL DISTRICT

BY: Walter Smith Jr

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